

Appl. No. 10/687,897
Docket No. CM2512C
Amdt. dated August 16, 2010
Reply to Office Action mailed on March 16, 2010
Customer No. 27752

REMARKS

Claim Status

Claims 7 and 8 have been canceled without prejudice.

Claims 2, 5, 11, 12, 14, and 17-19 are pending in the present application.

Claim 2 has been amended to more particularly point out the claimed invention. Support for this amendment can be found in the specification, at, for example page 32, lines 20-23, and Examples 1-3.

Claims 1, 3, 4, 6, 9, 10, 13, 15, and 16 remain withdrawn as a result of an earlier restriction requirement.

I. The Final Office Action has failed to establish a prima facie case supporting the rejection of claims 2, 5, 8, 11, 12, 14, and 17-19 under 35 USC §103(a) Over Morris et al. and Roe in View of Grub et al.

Applicants respectfully submit that Claims 2, 5, 8, 11, 12, 14 and 17-19 are patentable over the cited references.

Claims 2, 5, 8, 11, 12, 14 and 17-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Morris et al. (US 5,514,122) and Roe (US 5,609,587) in view of Grub et al. (US 5,266,592). Applicants respectfully traverse this rejection and request that this rejection be reversed.

Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness because none of the references, alone or in combination, disclose each and every element of the presently claimed invention.

The presently claimed invention relates to a feminine napkin comprising a topsheet comprising an emollient-containing composition consisting essentially of from about 0.1% to about 99.9% of menthone glycerol ketal and from about 99.9% to about 0.1% of triethyl citrate. The Office Action has not shown where any of the references, alone or in combination, teach or suggest an emollient-containing composition consisting

essentially of menthone glycerol ketal and triethyl citrate as claimed. As such, Applicants respectfully submit that the Office Action has not set forth a *prima facie* case of obviousness with respect to claims 2, 5, 8, 11, 12, 14 and 17-19 and withdrawal of the rejection is respectfully requested.

II. The rejection should be reversed because even if a *prima facie* case of obviousness is properly established, the prior art as cited in the office action teaches away from the claims of the present application.

Even if a *prima facie* case of obviousness is established, Applicants respectfully submit that Roe teaches away from Applicants' claimed invention. Roe, in at least two ways, leads a person of ordinary skill in a direction divergent from the path taken by the Applicants.

A. Roe teaches away because Roe teaches a polyol polyester having at least 4 ester groups.

First, Applicants respectfully submit that Roe teaches a lotion coating comprising a liquid polyol polyester emollient combined with an agent capable of immobilizing said emollient or a polyol polyester immobilized on the topsheet. (Col. 3, lines 21 to 50). Roe defines a polyol polyester as "a polyol having at least 4 ester groups." (Col. 11, lines 1 to 2). By defining polyol polyester, Roe acts as its own lexicographer and provides a specific definition. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315-16 (Fed. Cir. 2005). Applicants assert that triethyl citrate consists of less than four ester groups. Hence, Roe guides one ordinarily skilled in the arts away from using triethyl citrate.

B. Roe teaches away because Roe teaches the need to use an immobilizing agent when using a liquid polyol polyester.

Second, when using a liquid polyol polyester, Roe teaches that a "key component of the lotion compositions of the present invention is an agent capable of immobilizing the liquid polyol polyester emollient." (Col. 17, line 65 through Col. 18, line 2). Roe teaches the use of an immobilizing agent as a means of preventing undesired effects on the absorbency of the diaper core due to the hydrophobic characteristics of the emollients. (Col. 18, lines 11 to 23). The immobilizing agent counteracts the "tendency of the

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emollient to migrate or flow by keeping the emollient primarily localized on the surface of the diaper topsheet.” (Col. 18, lines 20 to 23).

Applicants do not use triethyl citrate, an emollient, with an immobilizing agent. Applicants place triethyl citrate in combination with menthone glycerol ketal on the topsheet without an immobilizing agent resulting in a prolonged freshness sensation to the wearer. (Specification, page 7, lines 26 to 28). Further, the use of triethyl citrate as an emollient contributes to the physical and chemical stability of the cooling agent during storage and use of the articles. (Page 5, lines 5 to 6).

C. Conclusion

Roe teaches away from Applicants claimed invention in at least two ways. Roe not only discourages one skilled in the arts from using triethyl citrate, but also further leads one in a divergent direction from that of the Applicants by using an immobilizing agent with the liquid polyol polyester.

Based on the above, Applicants respectfully submit that the Office Action fails to establish a *prima facie* case of obviousness with respect to Claim 2 of the present application. Even if a *prima facie* case of obviousness is established, Applicants respectfully submit that Roe teaches away from the claimed invention. As such, the Applicants submit that Claim 2 is allowable and respectfully request that Claim 2 be allowed.

Claims 5, 8, 11, 12, 14 and 17-19 depend upon Claim 2. As discussed above, the Applicants submit that Claim 2 is allowable. Thus, the Applicants submit that Claims 5, 8, 11, 12, 14 and 17-19 are also allowable. As such, Applicants respectfully request that Claims 5, 8, 11, 12, 14 and 17-19 be allowed.

Summary

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In

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view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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